

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application)

of)

MOLOKAI PUBLIC UTILITIES, INC.)

For review and approval of rate)
increases; revised rate schedules;)
and revised rules.)

DOCKET NO. 2009-0048

PUBLIC UTILITIES
COMMISSION

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FILED

**COUNTY OF MAUI'S RESPONSES TO WEST MOLOKAI ASSOCIATION'S
INFORMATION REQUESTS TO THE COUNTY OF MAUI**

CERTIFICATE OF SERVICE

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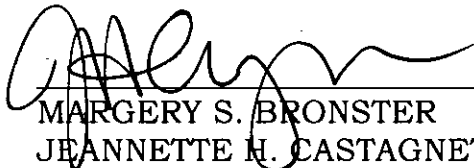
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INFORMATION REQUESTS TO THE COUNTY OF MAUI**

COUNTY OF MAUI (the "County"), by and through its attorneys,
BRIAN T. MOTO, Corporation Counsel, JANE E. LOVELL, Deputy Corporation
Counsel, and BRONSTER HOSHIBATA, submits its responses to West Molokai
Association's Information Requests to the County of Maui filed on January 19,
2010.

DATED: Honolulu, Hawaii, January 28, 2010.



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**WMA-IR-COM-
101**

Please provide (or make available to personnel from West Molokai Association) all records in the possession of the County of Maui regarding the quality of MPU water which records may be the result of testing by any County of Maui agency or reports by others which are in County's possession, for all water quality data collected since 2002.

Response: The County objects to this request on the basis that the County has no legal duty to test the quality of MPUI water, and does not do so. The County is informed and believes that water quality data can be obtained from MPUI itself or the State of Hawaii, Department of Health ("DOH").

**WMA-IR-COM-
102**

In County of Maui's January 13, 2010 statement regarding direct testimony, County states that MPUI's water service "does not comply with applicable federal, state, and county water quality laws, rules and regulations." Please provide citations for each federal, state, and county water quality law, rule, and regulation which, in County of Maui's opinion, MPUI is non-

compliant. Please be specific, with citations showing the sections and subsections of each law in which County of Maui contends MPUI is non-compliant.

Response: The County objects to this request because it seeks information subject to the work product privilege. Specifically, the request seeks the mental impressions, conclusions, opinions, and/or legal theories of counsel which are not the proper subject of discovery or information requests. Without waiving such objections, and subject to them, the County responds that documents provided to the PUC in this docket by customers of the utility suggest that the utility has exceeded MCLs or other applicable water quality standards on occasion. In addition, the County is informed and believes that the utility, or its affiliates, are operating Well 17 without a permit in violation of HRS Chapter 174-48.

**WMA-IR-COM-
103**

In reference to the Well 17 and the permitting process conducted by the State of Hawaii Commission on Water Resource Management, please succinctly state the County of Maui's position relative to the County's preferred allocations of Well 17 water for each of the Commission-

certified water utilities.

Response: The County objects to this request on the ground that it is irrelevant. The County is not a party to the permitting process conducted by the State of Hawaii Commission on Water Resource Management concerning Well 17 and therefore has no “position” with respect to allocations, other than to note that a CWRM permit is required pursuant to HRS § 174C-48 for pumping groundwater from a Groundwater Management Area.

**WMA-IR-COM-
104**

Please provide access or make available to a representative of West Molokai Association (or, in the alternative, provide electronically without need of providing hard copies), the 34 agreements purportedly entered into between County of Maui, on the one hand, and Molokai Properties, Ltd. (or its predecessors in interest), with regard to arrangements for the development of improvements in the MPUI service area or facilities designed to serve the MPUI service area, regarding Molokai Properties, Ltd. (or its affiliates, subsidiaries, or predecessors in interest) responsibilities to maintain roadways, maintain fire hydrants, provide potable water to residents in the MPUI service area, etc. (It

appears these documents may be readily accessible, as one or more documents exchanged in the discovery process of pending civil litigation.)

Response: The County objects to this request on the ground that the assumption regarding documents “exchanged in the discovery process of pending civil litigation” is unfounded and speculative. Without waiving the foregoing objection, and subject to it, the County previously provided responsive documents to counsel for WMA on September 2, 2008 when counsel for the County provided a copy of the County’s Complaint and Exhibits 1 to 44 filed in County of Maui v. Molokai Properties, Ltd. fka Molokai Ranch, Civil No. 08-1-0493(1), in the Second Circuit, State of Hawaii.

WMA-IR-COM-105

Please provide all plans, design, as-built drawings, drawings, specifications, schematics, and other submittals from MPUI (and its parent company, or predecessors to MPL, or other MPL affiliated companies), related to the design, construction, and major repairs and improvements of the facilities comprising the MPUI water utility system, in the possession of the County of Maui. [Presumably,

MPUI/MPL et al. submitted such documents for grading permits, building permits, engineering work, etc.] These documents can be provided electronically, or hard copy, or merely made available to a representative of WMA, upon arrangement. [A similar Information Request was served upon MPUI and MPL, with little substantive response to date.]

Response: The County objects to this request on the bases that it is vague, burdensome, overbroad, unlimited as to time, and is based on erroneous and speculative assumptions.

**WMA-IR-COM-
106**

With regard to the County of Maui's Department of Water, indicate for the last four completed fiscal years, the amount of revenues generated by water sales, and compare that figure with operating expenses and capitalized projects.

Response: The County objects to this request on the basis that it is irrelevant and immaterial to this proceeding. The County Department of Water Supply's revenues from its water sales and its expenditures,

including capitalized projects, are not the subject of this rate making proceeding.

**WMA-IR-COM-
107**

If the Department of Water (or an agency by a similar name and function) has annual Income Statements and Year-End Balance Sheets, please provide each, calendar year/fiscal year 2005 through the most recent such completed reports.

Response: The County objects to this request on the grounds that the request is irrelevant and immaterial to this proceeding. The County's Department of Water Supply's financials are not the subject of this rate making proceeding.

**WMA-IR-COM-
108**

To the extent general funds of the County of Maui are appropriated to supplement revenues generated by the County of Maui Department of Water, to balance its annual budget, please provide the appropriated amounts for fiscal years 2005 to present.

Response: The County objects to this request on the grounds that the request is irrelevant and immaterial to this proceeding. County appropriations are not the

subject of this rate making proceeding. The County further objects that the assumptions on which this request are based are erroneous and speculative.

WMA-IR-COM-109

Please provide the annual amounts paid by the County of Maui to MPUI, for water provided by MPUI at County facilities, such as beach access ways, beach parks, etc. To the extent these amounts can be identified by location or name of park, that would be preferable.

Response: The County objects to this request on the grounds that it is irrelevant, vague, and unduly burdensome. The specific amounts paid to MPUI by the County are no more relevant than any amounts paid by any other consumer or customer of MPUI's water, including members of West Molokai Association.

WMA-IR-COM-110

Provide a generalized statement, with specific examples, of the nature and type of governmental services provided by the County of Maui to the owners and residents within the service area of MPUI, such as fire protection services, road improvements, county parks, etc. Please be specific with regard to the 6,800 acre area defined in this proceeding as the service area of MPUI.

Response: The County objects to this request on the grounds that it is irrelevant and immaterial to whether the rates requested by MPUI are just and reasonable, and also on the grounds that the request is vague and overbroad.

WMA-IR-COM-111

Somewhat in contrast to your response to the foregoing WMA-IR-COM-110, provide details of which County of Maui governmental services are not provided by the County to property owners and residents located within the service area of MPUI.

Response: The County objects to this request on the grounds that it is irrelevant and immaterial to whether the rates requested by MPUI are just and reasonable. The County also objects to this request on the grounds that it is vague and overbroad.

WMA-IR-COM-112

If the County of Maui has a statement of policy, or a set of criteria utilized in assessing whether or not it will assume a water or waste water system constructed by a private developer and tendered to the County of Maui for its ownership operation maintenance and improvement, please provide such statement of policy or check list.

Response: The County objects to this request on the grounds that it is irrelevant and immaterial to whether the rates requested by MPUI are just and reasonable. The County further objects to this request as it is well beyond the subject matter of this proceeding and is not the proper subject of an information request in this proceeding.

**WMA-IR-COM-
113**

Succinctly state the County of Maui's present position in the event MPUI does, in fact, permanently terminate its provision of potable water in its service area, both on a near-term basis (e.g. water tank trucks, etc.) and on a longer term basis, for a permanent resolution of the absence of a privately-owned potable water utility service.

Response: The County objects to this request on the grounds that it is irrelevant and immaterial to whether the rates requested by MPUI are just and reasonable. The County further objects to this request as it is well beyond the subject matter of this proceeding and is not the proper subject of an information request in this proceeding.

**WMA-IR-COM-
114**

Provide the amount of real estate taxes paid by MPL and its Molokai-based subsidiaries and affiliated companies,

for calendar years (or, if appropriate fiscal year) 2005 through to present.

Response: The County objects to this request on the ground that it is vague to the extent it fails to specify the MPL and Molokai based-subsiidiaries and affiliated companies for which information is sought. The County further objects that the request as to MPL itself is vague, ambiguous, and overbroad because it is not limited to properties relevant to the instant rate proceeding. If the requestor will better define and limit this request, the County will attempt to respond within a reasonable amount of time.

**WMA-IR-COM-
115**

Re: Fire Hydrants. Does County of Maui own, maintain, repair or otherwise have involvement with fire hydrants within the MPUI service area? If so, please explain, with specifics.

Response: The County objects to this request on the ground that the phrase “otherwise have involvement with” is vague and ambiguous. Without waiving this objection, and subject to it, to the best of the County’s current

knowledge, information, and belief, the fire hydrants located within MPUI's service area are owned, maintained, or repaired by the owner of the particular parcel on which the hydrant is located. If the requesting party will provide specific identifying information, such as a street address or TMK on which a hydrant of interest is located, the County will attempt to supplement its response.

WMA-IR-COM-116

Re: Fire Hydrants. Please provide land ownership and/or easement/right-of-way documentation for all of the fire hydrants located within the MPUI service area.

Response: The County objects to this request to the extent it is overbroad and burdensome, and seeks information that is not relevant and is immaterial to this proceeding.

WMA-IR-COM-117

Re: Fire Hydrants. How many fire hydrants are in the MPUI service area? Does County inspect them, and if so, how many are inspected and how often?

Response: The County objects to this request to the extent that it is overbroad and burdensome, and seeks information that is irrelevant and immaterial to this

proceeding. Without waiving these objections, and subject to them, generally speaking, the County does not routinely inspect fire hydrants that are not owned and maintained by the County. In order to determine whether a particular fire hydrant has been inspected due to damage or for some other similar reason, the County would need additional information, such as a TMK.

**WMA-IR-COM-
118**

Re: Fire Hydrants. Are any reports in County of Maui's custody related to the condition of fire hydrants within the MPUI service area. If so, please provide.

Response: The County objects to this request to the extent that it seeks information that is irrelevant and immaterial to this proceeding. Without waiving these objections, and subject to them, the County responds that in order to determine whether a particular fire hydrant has been inspected, the County would need additional information, such as a TMK.

**WMA-IR-COM-
119**

Re: Fire Prevention. With regard to MPUI's entire water system (vis-à-vis the fire hydrants only), when was the most recent County of Maui-sponsored inspection of the MPUI system, for any purpose (e.g. for fire protection; for

follow-up to Mayor Tavaré's [sic] 2008 public statements, or any other purpose). Please provide a copy of each such report – electronically only or in hard copy, or make such studies available to a representative of WMA, at a mutually convenient time.

Response: The County objects to this request on the ground that it is unintelligible and assumes facts not in evidence. Without waiving such objections, and subject to them, the County responds that it has not inspected MPUI's entire water system, and therefore has no written reports thereof.

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CERTIFICATE OF SERVICE

Pursuant to Hawaii Administrative Rules § 6-61-21(d), the undersigned certifies that a true and correct copy of the foregoing document was duly served on the following parties on January 28, 2010, at their last known addresses in the manner specified below:

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HAND DELIVERY
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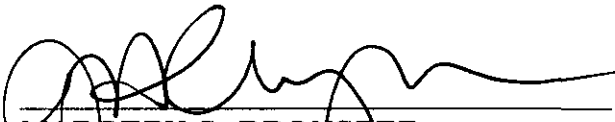
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HAND DELIVERY

DATED: Honolulu, Hawaii, January 28, 2010.



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